

STATE OF MICHIGAN
IN THE SUPREME COURT
APPEAL FROM COURT OF APPEALS

IN RE PETITION BY TREASURER OF
WAYNE COUNTY FOR FORECLOSURE

WAYNE COUNTY TREASURER,

Supreme Court No. 129341

Petitioner,
and

Court of Appeals No. 261074

MATTHEW TATARIAN and MICHAEL
KELLY,

Wayne County Circuit Court
No. 02-220192-PZ

Intervening Parties-Appellants,

v

PERFECTING CHURCH,

Respondent-Appellee.

AMICUS BRIEF OF MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY

ORAL ARGUMENT REQUESTED

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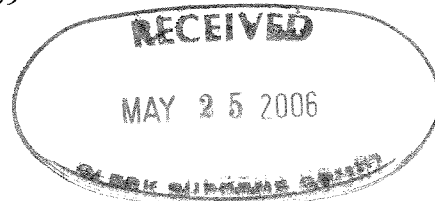


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QUESTION PRESENTED FOR REVIEW

- I. MCR 2.612(C) authorizes circuit courts to provide relief from judgment in cases involving misrepresentation. The General Property Tax Act requires circuit courts in tax foreclosure proceedings to find that notice and an opportunity to be heard was provided to everyone entitled to that notice and opportunity. MCL 211.78/, prohibits property interest owners whose rights were extinguished under the General Property Tax Act from bringing actions for possession against the subsequent owner and limits them to actions to recover monetary damages in the Court of Claims. Does MCL 211.78/ divest circuit courts of their jurisdiction to modify their foreclosure orders when those orders are the result of misrepresentation?**

INTEREST OF AMICUS

One issue this Court directed the parties in this case to address in their briefs was whether the trial court retained jurisdiction to grant relief from the judgment of foreclosure under MCR 2.612(C) notwithstanding the provisions of MCL 211.78l. In *Wayne Co Treasurer v Westhaven Manor Ltd Dividend Housing Ass'n*,¹ the Court of Appeals held that the Circuit Court retained jurisdiction under MCR 2.612(C) to modify or vacate its foreclosure order. Since this Court's decision in the present case will affect the precedent set in *Wayne Co Treasurer*, the background of that case is discussed below.

In 1966 the Legislature created the Michigan State Housing Development Authority (MSHDA) to assure an adequate supply of safe and sanitary housing for families of low and moderate income within the financial means of those families.² MSHDA is a public body corporate and politic within the State of Michigan's Department of Labor and Economic Growth.³ This Court affirmed the constitutionality of MSHDA and recognized the encouragement of housing construction as a proper public purpose.⁴

One instrument MSHDA uses to fulfill its legislatively mandated purpose is its Regulatory Agreement. A contractual agreement between MSHDA and housing developers, the Regulatory Agreement assures that property is leased to low and moderate-income persons by requiring certain rental rates and occupancy qualifications, including the requirement to rent to senior citizens.

There is a Regulatory Agreement on the property that Wayne County foreclosed in the *Wayne Co Treasurer* case. The Westhaven Manor Limited Dividend Housing Association

¹ 265 Mich App 285; 698 NW2d 879 (2005).

² MCL 125.1401(1).

³ MCL 125.1421(1).

⁴ *In re Advisory Opinion re Constitutionality of 1966 PA 346*, 380 Mich 554, 570; 158 NW2d 416 (1968).

Limited Partnership (the "Partnership") acquired title to certain real property in October 1984 (the "Property"). The Partnership applied for and received two loans from MSHDA totaling \$5,938,457 to finance the construction of the senior citizen apartment complex. To secure the loan, the Partnership signed a mortgage covering the Property. MSHDA recorded the mortgage with the Wayne County Register of Deeds.⁵ The Partnership also signed a Regulatory Agreement⁶ as a condition precedent to receiving the mortgage loan from MSHDA.

The Regulatory Agreement set the rental amount for each unit of Westhaven Manor.⁷ The Partnership agreed in the Regulatory Agreement to rent units to persons whose income did not exceed certain limits.⁸ The Regulatory Agreement also requires the Partnership to prefer the elderly and persons displaced by urban renewal as occupants.⁹ Thus, MSHDA through its Regulatory Agreement assured housing for low or moderate income senior households at the Property.

The Property is located in the City of Westland. As planned, the Partnership constructed a three-story senior citizen apartment complex on the Property known as Westhaven Manor. Westhaven Manor has 144 housing units and covers more than 100,000 square feet. The Property is far from vacant.

Because Westhaven Manor is mortgaged to MSHDA, the Property is exempt from *ad valorem* taxes.¹⁰ However, the Property is subject to special assessments. When a few hundred dollars in special assessments on the property were not paid, Wayne County, as the foreclosing governmental unit (FGU), initiated foreclosure proceedings under the General Property Tax Act

⁵ Exhibit 1 (Mortgage).

⁶ Exhibit 2 (Regulatory Agreement).

⁷ Exhibit 2 (Regulatory Agreement, p 1).

⁸ Exhibit 2 (Regulatory Agreement, p 4).

⁹ Exhibit 2 (Regulatory Agreement, p 5).

¹⁰ MCL 125.1415a.

(GPTA).¹¹ The GPTA required the Wayne County Treasurer to send notice of the delinquent special assessments to MSHDA as a mortgage holder not later than February 1 after the unpaid special assessments were returned to the county.¹² MSHDA did not receive the notice.

The Wayne County Treasurer filed a petition to foreclose numerous parcels of property, including the Property. The GPTA required the Wayne County Treasurer to file proof of notice of the foreclosure petition to MSHDA as a mortgage holder.¹³ MSHDA did not receive the notice.

The GPTA required the Wayne County Treasurer or the Treasurer's authorized representative to personally visit the Property to determine whether the Property was occupied.¹⁴ The Wayne County Treasurer's authorized representative purportedly visited the Property. She swore that the Property was "vacant land."¹⁵ In addition, the GPTA allows the FGU to place the notice in a conspicuous manner on the property *if* the FGU is unable to meet with the property's occupant.¹⁶ The Wayne County Treasurer neither attempted to meet with any of the occupants nor established that it was unable to meet with any of the numerous occupants of the Property. Moreover, the Wayne County Treasurer's authorized representative posted the notice on a tree in the back corner of the Property and not on the front door of the occupied building.

The GPTA required the Wayne County Treasurer to give notice of the show cause hearing by certified mail, return receipt requested, to persons identified as having an interest in the Property.¹⁷ The Wayne County Treasurer mailed the notices and filed a proof of service.

¹¹ 1893 PA 206, MCL 211.1 *et seq.*

¹² MCL 211.78f(1).

¹³ MCL 211.78h(1).

¹⁴ MCL 211.78i(3).

¹⁵ Exhibit 3 (Proof of Personal Visit).

¹⁶ MCL 211.78i(3)(d).

¹⁷ MCL 211.78i(2).

The mail log attached to the proof of service indicates that the status of the certified mailing to MSHDA was "unknown."¹⁸

Even though MSHDA did not receive notice, the show cause hearing was held on February 27, 2002, and the foreclosure hearing was held on March 4, 2002. The Wayne County Treasurer submitted the Proof of Personal Visit to indicate to the Circuit Court that notice was provided to all persons who had an interest in the Property who were entitled to notice. The Circuit Court relied upon the misrepresentation – that the property was vacant - to find that all those entitled to notice and an opportunity to be heard have been provided that notice and opportunity. The court's order vested title to the Property in the Wayne County Treasurer. The Wayne County Treasurer filed the notice of Judgment of Foreclosure with the Wayne County Register of Deeds.

The Wayne County Treasurer sold the Property –worth millions of dollars - to Re/Max Synergy for \$19,000. Re/Max Synergy never exercised control over the Property. But without a Regulatory Agreement between MSHDA and Re/Max Synergy, the eviction of low-income, senior tenants was a real possibility. Nevertheless, during the litigation in *Wayne County Treasurer*, the Partnership continued to manage the Property and honor the Regulatory Agreement.

When MSHDA learned about the tax sale, it filed a response to the show cause hearing and a motion under MCR 2.612(C) to set aside the Judgment of Foreclosure. At the same time, the Partnership filed similar pleadings. After MSHDA and the Partnership informed the Wayne County Circuit Court that the Property was not vacant and thus Wayne County had not provided

¹⁸ Exhibit 4 (mail log, p 360).

the required notice and opportunity, the Court, under MCR 2.612(C), vacated its Judgment of Foreclosure with respect to the Property.

Two years later the Court of Appeals determined that the Wayne County Circuit Court acted consistently with the GPTA. The Court of Appeals found that any proceeding under the GPTA conducted without due process of law is invalid.¹⁹ The Court of Appeals held that the Circuit Court retained jurisdiction to modify or vacate the order issued under an invalid proceeding.²⁰ But the Court of Appeals found that the Circuit Court did not address whether constitutional minimum due process was provided.²¹ So the Court of Appeals reversed the Circuit Court's order and remanded the case to the Circuit Court for it to determine whether MSHDA's and the Partnership's constitutional minimum due process rights were violated.²²

In a related matter, MSHDA filed a lawsuit against Wayne County and the Wayne County Treasurer in the Court of Claims. The Partnership also filed a lawsuit in the Court of Claims. The Court of Claims lawsuits have been stayed pending the final appellate outcome in *Wayne County Treasurer*.

This Court should determine that Circuit Courts retain jurisdiction to set aside their foreclosure orders that are entered as a result of misrepresentation. If the GPTA is interpreted to divest Circuit Courts of their jurisdiction to modify foreclosure orders entered as a result of misrepresentation, then MSHDA, by losing its Regulatory Agreement, is prevented from carrying out its legislatively mandated purpose to assure an adequate supply of safe and sanitary housing for families of low and moderate income on property that is wrongfully foreclosed. The monetary damages remedy provided by MCL 211.78/ is inadequate to compensate MSHDA for

¹⁹ *Wayne County Treasurer*, 265 Mich App at 293.

²⁰ *Wayne County Treasurer*, 265 Mich App at 293.

²¹ *Wayne County Treasurer*, 265 Mich App at 296.

²² *Wayne County Treasurer*, 265 Mich App at 300.

the loss of its Regulatory Agreement and the loss of availability of senior citizen housing. Thus, MSHDA has a strong interest in assuring dwelling accommodations for low or moderate income families on property that is wrongfully foreclosed and sold.

The Appellants and other *amicus curiae* in this case, however, argue that the Legislature, in MCL 211.78l, intended to divest Circuit Courts of jurisdiction to modify foreclosure orders because the finality of those orders is needed to encourage the expeditious return of property to productive use. Even if that was the Legislature's intent, there is no explicit language in the GPTA to show that the Legislature intended to preclude Circuit Courts from setting aside fraudulently obtained foreclosure orders on property *that is productively used*. Thus, the Legislature did not divest the Circuit Courts of their jurisdiction to amend their foreclosure orders that are based upon misrepresentation.

COUNTER-STATEMENT OF PROCEEDINGS AND FACTS

The facts in the case presently before this Court are similar to the facts in the *Wayne County Treasurer* case. The Wayne County Treasurer foreclosed on Perfecting Church's property that should have been exempt from *ad valorem* taxes. The Wayne County Circuit Court relied upon the Wayne County Treasurer's foreclosure petition to find that all those entitled to notice and an opportunity to be heard have been provided that notice and opportunity. After the Circuit Court entered a judgment forfeiting the property to the Wayne County Treasurer, Wayne County sold the church's parking lot to the Appellants in this case. Like MSHDA in *Wayne County Treasurer*, Perfecting Church did not learn about the tax sale of its property until after it was sold. Perfecting Church then sought relief from judgment in the Circuit Court under MCR 2.612(C).

ARGUMENT

- I. Since the General Property Tax Act requires circuit courts in tax foreclosure orders to find that notice and an opportunity to be heard was provided to everyone entitled to that notice and opportunity, MCL 211.78/ does not divest circuit courts of their jurisdiction under MCR 2.612(C) to modify their foreclosure orders when those orders are the result of misrepresentation.**

A. Standard of Review

The scope of the Circuit Courts' subject matter jurisdiction is a question of law that this Court reviews *de novo*.²³

B. Analysis

MCL 211.78/ does not divest Circuit Courts of their jurisdiction to modify their foreclosure orders.

The judicial power of this State is vested exclusively in one court of justice.²⁴ Circuit Courts have original jurisdiction in all matters not prohibited by law.²⁵ Circuit Courts have jurisdiction to hear and determine all civil claims and remedies except where exclusive jurisdiction is given to some other court.²⁶

Circuit Courts have the power and jurisdiction prescribed by rule of the Supreme Court.²⁷ The Michigan Supreme Court has granted Circuit Courts the power to provide relief to a party from the courts' own orders, including matters involving fraud, misrepresentation, or other misconduct²⁸:

On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds: . . . Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.

²³ *Lapeer Co Clerk v Lapeer Circuit Judges*, 465 Mich 559, 566; 640 NW2d 567 (2002).

²⁴ Const 1963, art 6, § 1.

²⁵ Const 1963, art 6, § 13.

²⁶ MCL 600.605.

²⁷ MCL 600.601(1)(c).

²⁸ MCR 2.612(C)(1)(c).

Under the GPTA, owners of extinguished property interests who claim they did not receive notice cannot bring an action for possession against the subsequent owner but may only bring an action to recover monetary damages in the Court of Claims²⁹:

If a judgment for foreclosure is entered under section 78k and all existing recorded and unrecorded interests in a parcel of property are extinguished as provided in section 78k, the owner of any extinguished recorded or unrecorded interest in that property who claims that he or she did not receive any notice required under this act shall not bring an action for possession of the property against any subsequent owner, but may only bring an action to recover monetary damages as provided in this section.

The court of claims has original and exclusive jurisdiction in any action to recover monetary damages under this section.

The divestiture of jurisdiction from the Circuit Courts is an extreme undertaking. Statutes that seemingly do so are to be strictly construed.³⁰ Divestiture of jurisdiction cannot be accomplished except under clear mandate of the law.³¹

MCL 211.78l prohibits property interest owners who claim they did not receive any notice from bringing an action for possession against any subsequent owner, but allows them to only bring an action to recover monetary damages in the Court of Claims. MCL 211.78l does not specifically state that Circuit Courts lack jurisdiction to set aside their own orders where the property interest owner claims lack of notice. Instead, the words in the statute say that owners of any extinguished recorded or unrecorded interest in their property who claim that they did not receive the required notice shall not bring an action for possession of the property against any subsequent owner. Divestiture of Circuit Court jurisdiction should not be implied because this Court granted Circuit Courts the fundamental authority to set aside orders obtained by misrepresentation and this Court has not amended MCR 2.612(C). The words in the statute do

²⁹ MCL 211.78l(1) and (2).

³⁰ *Wikman v City of Novi*, 413 Mich 617, 645; 322 NW2d 103 (1982).

³¹ *Poling v Secretary of State*, 142 Mich App 54, 60; 369 NW2d 261 (1985).

not say that Circuit Courts lack jurisdiction to set aside orders obtained by misrepresentation as authorized under MCR 2.612(C). Strictly construing MCL 211.78l, this Court should find that the statute does not divest Circuit Courts of their authority to set aside their own orders obtained through misrepresentation.

MCL 211.78l does not divest Circuit Courts of their jurisdiction because it isn't even applicable in some tax foreclosure proceedings. MCL 211.78l states that the owner of any extinguished recorded or unrecorded interest in property who claims that lack of notice cannot bring an action for possession of the property against any subsequent owner. In *Wayne Co Treasurer v Westhaven Manor Ltd Dividend Housing Ass'n*,³² neither MSHDA nor the Partnership sued the subsequent purchaser for possession as contemplated by MCL 211.78l because *the Partnership kept possession of the Property throughout the litigation*.

MCL 211.78l states that the Court of Claims has original and exclusive jurisdiction in any action *to recover monetary damages*. It does not state, as claimed by one *amicus*,³³ that the Court of Claims has original and exclusive jurisdiction over post-foreclosure claims involving lack of notice. MCR 2.612(C), on the other hand, states that Circuit Courts may relieve a party from a final judgment based on fraud, misrepresentation, or other misconduct of an adverse party. In *Wayne Co Treasurer v Westhaven Manor Ltd Dividend Housing Ass'n*,³⁴ MSHDA did not file an action to recover its monetary damages in Wayne County Circuit Court. Instead, MSHDA sought to reinstate its Regulatory Agreement. So MSHDA, under MCR 2.612(C), asked the Wayne County Circuit Court to modify the foreclosure order obtained as a result of misrepresentation. The words in MCL 211.78l only grant original and exclusive jurisdiction to

³² 265 Mich App 285; 698 NW2d 879 (2005).

³³ Brief of Amicus Curiae Michigan Association of County Treasurers In Support of Intervening Parties – Appellant, p 24.

³⁴ 265 Mich App 285; 698 NW2d 879 (2005).

the Court of Claims to recover monetary damages. The words in MCL 211.78l do not divest the Circuit Courts' jurisdiction under MCR 2.612(C).

The GPTA requires the Circuit Court to include in the foreclosure order a finding that all those persons entitled to notice and an opportunity to be heard have been provided that notice and opportunity.³⁵ In the *Wayne County Treasurer* case, the Wayne County Treasurer's authorized representative purportedly visited the property and mischaracterized the property as vacant land. The Wayne County Treasurer compounded its mistake by misrepresenting to the Wayne County Circuit Court that it had provided notice to all those persons entitled to notice. The Wayne County Circuit Court relied upon the Wayne County Treasurer's misrepresentation to find in its foreclosure order that all those persons entitled to notice and an opportunity to be heard had been provided the required notice and opportunity. When the Circuit Court later determined that the Property was not vacant and so not all persons were afforded due process since notice was not provided under MCL 211.78i(3), then the Circuit Court's original finding in its foreclosure order was invalid. Under this circumstances, the Circuit Court retained jurisdiction over the foreclosure and retained the ability under MCR 2.612(C) to modify or vacate the judgment or order.

If MCL 211.78l is interpreted to divest Circuit Courts of their jurisdiction to modify orders obtained through misrepresentation, property may be fraudulently foreclosed and the courts would be powerless to remedy the wrongdoing. For example, a dishonest employee of an FGU could commence tax forfeiture proceedings on productive property with the intent to sell the property to an unscrupulous purchaser. The FGU might then purposefully or negligently fail to notify property interest owners, misrepresent to the Circuit Court that the required statutory

³⁵ MCL 211.78i(5)(f).

procedures were followed, and then obtain a foreclosure order that the Circuit Court could not set aside after it learns about the misrepresentation. The Legislature cannot have intended to render the Circuit Court powerless to rectify the injustice committed against it and thus reward wrongdoing under these circumstances without explicit language in MCL 211.78l divesting Circuit Courts of their jurisdiction.

Appellants and other *amicus curiae* in this case argue that the Legislature, in MCL 211.78l, intended to divest Circuit Courts of jurisdiction to modify foreclosure orders because the finality of those orders is needed to encourage the expeditious return of property to productive use. But the Legislature also realized that the GPTA might not provide property owners with sufficient notice and opportunity to contest proceedings.³⁶ The goal of finality of foreclosure orders – to encourage the expeditious return of property to productive use – should not come at the expense of foreclosing property that is productively used without affording property owners due process.

Appellants and other *amicus* also argue that MCL 211.78k(5)(g) reflects the intent of the Legislature to prohibit Circuit Courts from modifying foreclosure orders. That section of the GPTA states that a judgment entered under the GPTA is a final order and except as provided in subsection (7), the order shall not be modified, stayed, or held invalid after the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section. But MCL 211.78k(5)(g) does not state that Circuit Courts lack jurisdiction to set aside foreclosure orders that are the result of misrepresentation. The Legislature added this section to the GPTA after the decision in *Wayne County Treasurer*. If the public policy of the GPTA is to encourage

³⁶ House Legislative Analysis, HB 4489 and SB 488, 489, and 507, July 23, 1999, p 19 found in Brief of Amicus Curiae Michigan Association of County Treasurers In Support of Intervening Parties – Appellant, Exhibit E.

purchasers to restore property to tax rolls,³⁷ the goal is not achieved in every situation.

Westhaven Manor is not on the tax rolls because it is mortgaged to MSHDA. More importantly, the Property promotes the public welfare by ensuring housing for low-income persons through the Regulatory Agreement.

This Court has held that equity will grant relief where a significant mistake constitutes constructive fraud. In *Spoon-Shacket Co Inc v Oakland Co*,³⁸ the plaintiff owned vacant lots in a subdivision that were assessed from \$150 to \$400 in 1955. The next year homes were built in the subdivision, but not on the plaintiff's vacant lots. The city of Madison Heights assessed the new homes in the subdivision at \$5,500 each, and mistakenly assessed the plaintiff's vacant lots at the same amount. The plaintiff did not receive a tax statement for 1956. The city discovered its error and in 1957 reassessed the plaintiff's vacant lots to their original amounts. The plaintiff then protested the 1956 erroneous assessment. This Court held that equity should intervene whenever one party, public or private, seeks unjustly to enrich itself at the expense of another on account of the party's own mistake and the other's want of immediate vigilance.³⁹

One hundred years ago, this Court recognized that the legislature may limit the power of the Court to set aside a tax proceeding judgment.⁴⁰ But in that same case, this Court also held that the Court has the undisputed power to correct errors; and so, suits in equity may be brought under the proper circumstances involving the validity of proceedings.⁴¹ Indeed, where a tax is valid and constitutes an enforceable lien against the premises, but a serious defect occurs in the tax sale, it may be attacked by the owner of the premises, provided the owner acts promptly and

³⁷ See, e.g., *Wayne Co Chief Executive v Mayor of the City of Detroit*, 211 Mich App 243; 535 NW2d 199 (1995).

³⁸ 356 Mich 151, 166; 97 NW2d 25 (1959).

³⁹ *Spoon-Shacket Co Inc v Oakland Co*, 356 Mich at 156.

⁴⁰ *Cole v Auditor General*, 132 Mich 262, 265; 93 NW 890 (1903).

⁴¹ *Cole v Auditor General*, 132 Mich at 266.

does equity.⁴² This Court must have intended to authorize Circuit Courts under MCR 2.612(C) to set aside their orders when those courts learn that their orders were fraudulently obtained.

The Legislature recognized that former owners are entitled to due process rights and that the failure to follow a requirement under the GPTA did not create a claim unless due process rights are violated⁴³:

It is the intent of the legislature that the provisions of this act relating to the return, forfeiture, and foreclosure of property for delinquent taxes satisfy the minimum requirements of due process required under the constitution of this state and the constitution of the United States but that those provisions do not create new rights beyond those required under the state constitution of 1963 or the constitution of the United States. *The failure of this state or a political subdivision of this state to follow a requirement of this act relating to the return, forfeiture, or foreclosure of property for delinquent taxes shall not be construed to create a claim or cause of action against this state or a political subdivision of this state unless the minimum requirements of due process accorded under the state constitution of 1963 or the constitution of the United States are violated.*

The failure to provide notice under MCL 211.78f, standing alone, does not amount to a due process claim.⁴⁴ On the other hand, MCL 211.78k(5)(f) requires Circuit Courts to include in the foreclosure order a finding that all those persons entitled to notice and an opportunity to be heard have been provided that notice and opportunity. If that finding by the Circuit Court is the result of misrepresentation, then MCL 211.78l cannot divest Circuit Courts of jurisdiction to set aside the order when the Legislature stated in MCL 211.78(2) that failing to provide minimum due process does not excuse failing to follow a requirement under the GPTA. And the United States Supreme Court has said due process requires a State to take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so.

⁴² *Detroit Trust Co v Lieberwitz*, 275 Mich 429, 436; 266 NW 406 (1936).

⁴³ MCL 211.78(2) (emphasis added).

⁴⁴ *Republic Bank v Genesee Co Treasurer*, 471 Mich 732, 742; 690 NW2d 917 (2005).

In *Jones v Flowers*,⁴⁵ the Commissioner of State Lands in Arkansas mailed Jones a certified letter at Jones's home where he no longer lived, indicating that the property was subject to sale in two years unless he redeemed the property. The letter was returned to the Commissioner as "unclaimed." The Arkansas Supreme Court held that due process does not require actual notice, and that attempting to provide notice by certified mail satisfied due process under the circumstances. The United States Supreme Court granted *certiorari*, noting the conflict among State Supreme Courts regarding due process rights, and specifically referring to this Court's decision in *Smith v Cliffs on the Bay Condominium Ass'n*.⁴⁶ The United States Supreme Court decided that when mailed notice of a tax sale is returned unclaimed, the State must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so.⁴⁷

Wayne County's failure to notify MSHDA in *Wayne Co Treasurer*⁴⁸ is similar to the failure to notify in *Jones*. In *Jones*, the certified letter was returned as "unclaimed." In *Wayne County Treasurer*, Wayne County's mail log shows that the status of the certified letter sent to MSHDA was "unknown." Those cases differ from *Republic Bank*, where an employee of the bank signed the certified mail receipt card for notice. Since due process requires FGUs to take additional reasonable steps to attempt to provide notice to property owners before selling their property when mailed notice of a tax sale is returned unclaimed, Circuit Courts must retain jurisdiction to set aside foreclosure orders when a FGU not only fails to take those additional steps but in addition misrepresents to a Circuit Court that property is vacant.

⁴⁵ ___ US __; ___ S Ct __; ___ L Ed 2d __ (2006 U.S. Lexis 3451, April 26, 2006).

⁴⁶ 463 Mich 420, 429; 617 NW2d 536 (2000).

⁴⁷ *Jones*, ___ US __, Lexis page 12.

⁴⁸ 265 Mich App 285, 293; 698 NW2d 879 (2005).

The Michigan Department of Treasury argues as an *amicus* in this case that MCL 211.78k(6), coupled with the remedy of money damages in MCL 211.78l, divests the Circuit Courts of jurisdiction.⁴⁹ But as the Court of Appeals determined in *Wayne County Treasurer*,⁵⁰ MCL 211.78k(6) does not limit former owners to appealing foreclosure orders to the Court of Appeals within 21 days as required under MCL 211.78k(7) because the interested party must know about the foreclosure order to appeal within 21 days. In addition, the money damages remedy is inadequate to protect MSHDA's interest. Admittedly, MSHDA may recover money damages on its mortgage in the Court of Claims, and MSHDA has protected its interest by filing suit in that court. But the loss of MSHDA's Regulatory Agreement through an invalid tax foreclosure proceeding cannot be adequately measured by money damages.

⁴⁹ Amicus Brief of Michigan Department of Treasury, p 11.

⁵⁰ 265 Mich App at 294-295.

CONCLUSION

Circuit Courts were created by our Constitution and have broad authority to hear all claims and remedies except where exclusive jurisdiction is given to some other court. This Court empowered Circuit Courts to set aside their orders that are issued as a result of misrepresentation. For more than 100 years Circuit Courts have held the power to correct errors in tax foreclosure proceedings. There is no explicit language from the Legislature that divests Circuit Courts of their authority to correct errors. Thus, this Court should not hold that Circuit Courts now lack that authority.

The justification for the finality of foreclosure orders – to encourage redevelopment of unproductive property – is not always present in tax foreclosure proceedings. When Circuit Courts improperly enter foreclosure orders, on property that is productively used, as a result of misrepresentation, then there is no justification for the finality of such fraudulently obtained foreclosure orders. There is no reason to divest the Circuit Courts of this power when there is an wrongful foreclosure of productive property.

Damages are inadequate to compensate MSHDA which might lose its Regulatory Agreement on property that provides dwelling accommodations for senior citizens and low and moderate income families.

RELIEF SOUGHT

The Michigan State Housing Development Authority asks this Court to hold that MCL 211.78/ does not divest Circuit Courts of their jurisdiction under MCR 2.612(C) to set aside orders.

Respectfully submitted,

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